



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 495

[CMS-0044-CN2]

RIN-0938-AQ84

Medicare and Medicaid Programs; Electronic Health Record Incentive Program--

Stage 2; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors and typographical errors in the final rule entitled "Medicare and Medicaid Programs; Electronic Health Record Incentive Program-Stage 2" which appeared in the September 4, 2012 issue of the **Federal Register**.

EFFECTIVE DATE: This document is effective on November 12, 2012, except that the correction to instruction 8.NN (77 FR 54149) is effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012-21050 of September 4, 2012 (77 FR 53968), the final rule entitled "Medicare and Medicaid Programs; Electronic Health Record Incentive Program--Stage 2" there were a number of technical errors and typographical errors that

are identified in the Summary of Errors section and corrected in the Correction of Errors section.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 54041 in our response to a public comment regarding the meaningful use objective "provide structured electronic lab results to eligible professionals," we inadvertently did not replace a placeholder "ONC reference once available" with the reference when it became available.

On page 54051, in our discussion of the submission period for electronic submissions, we inadvertently omitted references to the applicable provider or supplier (that is, eligible professional (EP), eligible hospital, and critical access hospital) that has to meet the calendar year or fiscal year submission period requirements. Also on this page in the footnote following Table 5, we made errors in our description of the providers and suppliers that are in the first year of demonstrating meaningful use for purposes of avoiding a payment adjustment.

On page 54052 in our response to public comments regarding the transition to electronic health record (EHR) technology certified to the 2014 Edition EHR certification criteria, we inadvertently omitted certain CQMs that we included in the Stage 1 final rule but are not finalizing in the Stage 2 final rule for reporting beginning in CY 2014 after consideration of the public comments. Also on this page, in another response to public comments regarding 2011 Edition of EHR certification criteria, we made a grammatical error.

On page 54053, we inadvertently omitted certain CQMs that would be excluded from an EP's option of reporting in the Stage 1 final rule.

On pages 54044, 54055, 54056, 54058, 54068, 54079, 54081, and 54120, we made inadvertent errors in the numbering and referencing of several tables.

On page 54056, we made inadvertent errors in specifying the providers and suppliers that would receive the annual fiscal or calendar year updates to the clinical quality measure (CQM) specifications.

On pages 54069, 54072, and 54073, in Table 8 – CQMs Finalized for Medicare and Medicaid EPs Beginning with CY 2014, we made several typographical and technical errors in the titles/descriptions of several CQMs. We also made typographical errors in referencing the footnotes for CQM 0418.

B. Summary of Errors in the Regulations Text

On page 54149, we made a technical error in an amendatory statement (NN) for §495.6. In the amendatory statement, we erroneously stated that we were adding paragraphs (f)(1)(ii)(B) and (C) instead of stating that we were adding paragraph (f)(1)(ii)(B).

On pages 54155 and 54157, we made technical errors by omitting qualifying language in §495.6(l)(6)(ii) and §495.6(m)(4)(ii).

On page 54153 (in §495.6(j)(14)(ii)(C)(1)), we made a typographical error in the regulatory citation.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in

accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this correcting document does not constitute a rulemaking that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical and typographical errors in the preamble and regulations text of the September 4, 2012 final rule and does not make substantive changes to the policies that were adopted. As a result, this correcting document is intended to ensure that the final rule accurately reflects the policies adopted in that rule.

In addition, even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our

final rule. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2012-21050 of September 4, 2012 (77 FR 53968), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 54041, second column, third paragraph, line 17, the phrase "criteria at (ONC reference once available)" is corrected to read "criteria at 45 CFR 170.314(b)(6)".

2. On page 54044, lower half of the page, in the table heading for Table B5-- Stage 2 Objectives and Measures, the table number "Table B5" is corrected to read "Table 4A".

3. On page 54051--

a. Top quarter of the page, second column, first full paragraph, line 4, the phrase "CY or FY respectively." is corrected to read "CY or FY for EPs, eligible hospitals, and CAHs, respectively."

b. Second quarter of the page, in Table 5 Reporting and Submission Periods for EPs, Eligible Hospitals and CAHs in Their First Year of Meaningful Use Submitting CQMs Via Attestation Beginning With CY/FY 2014, the footnote following the table, line 1, the phrase "Medicare EPs and eligible hospitals" is corrected to read "EPs, eligible hospitals, and CAHs in the Medicare EHR Incentive Program".

4. On page 54052, third column--

a. First partial paragraph, line 1, the phrase "0013, 0027, 0084)." is corrected to read "0013, 0027, 0084) as well as 9 CQMs that we included in the Stage 1 final rule but

are not finalizing in this Stage 2 final rule for reporting beginning in CY 2014 (NQF 0001, 0012, 0014, 0047, 0061, 0067, 0073, 0074, 0575)).".

b. Last paragraph, lines 2 and 3, the phrase "EHR technology should based" is corrected to read "EHR technology should be based".

5. On page 54053, first column, last bulleted paragraph, line 9, the phrase "reporting NQF 0013, 0027, 0084" is corrected to read "reporting NQF 0013, 0027, 0084, 0001, 0012, 0014, 0047, 0061, 0067, 0073, 0074, 0575".

6. On page 54055, first column, first full paragraph, lines 22 and 23, the phrase "MAP in Tables 7 (EPs) and 8 (eligible hospitals and CAHs)" is corrected to read "MAP in Tables 8 (EPs) (77 FR 13749 through 13757 and 9 (eligible hospitals and CAHs) (77 FR 13760 through 13763)".

7. On page 54056, second column, fourth full paragraph--

a. Line 7, the phrase "FY/CY for hospitals and EPs respectively." is corrected to read "FY and CY for eligible hospitals and CAHs, and EPs, respectively.".

b. Line 29, the reference "Table 7" is corrected to read "Table 8".

c. Line 32, the reference "Table 8" is corrected to read "Table 10".

8. On page 54058—

a. Second column, fourth full paragraph, line 4, the reference "Table 7" is corrected to read "Table 8".

b. Third column, first partial paragraph, line 2, the reference "Table 7" is corrected to read "Table 8".

9. On page 54068,

a. First column, first full paragraph--

- (1) Line 5, the reference "Table 7" is corrected to read "Table 8".
- (2) Line 7, the reference "Table 7" is corrected to read "Table 8".
- (b) First column, second full paragraph, line 3, "Table 7" is corrected to read "Table 8".
- c. Third column, first full paragraph, line 3, the reference "Table 7" is corrected to read "Table 8".
10. On pages 54069 through 54075, in Table 8 – CQMs Finalized for Medicare and Medicaid EPs Beginning with CY 2014, we make the following corrections:
- a. Column 2 (CQM title and description) is corrected for the following entries:

CQM Number	CQM Title & Description	Measure Steward & Contact Information	Other Quality Measure Programs that use the Same CQM***	New CQM	Domain
NQF 0018 *	Title: Controlling High Blood Pressure Description: Percentage of patients 18-85 years of age who had a diagnosis of hypertension and whose blood pressure was adequately controlled (<140/90mmHg) during the measurement period.	NCQA Contact Information: www.ncqa.org	EHR PQRS, ACO, Group Reporting PQRS, UDS		Clinical Process/Effectiveness
NQF 0385	Title: Colon Cancer: Chemotherapy for AJCC Stage III Colon Cancer Patients Description: Percentage of patients aged 18 through 80 years with AJCC Stage III colon cancer who are referred for adjuvant chemotherapy, prescribed adjuvant chemotherapy, or have previously received adjuvant chemotherapy within the 12-month reporting period	AMA-PCPI Contact Information: cpe@ama-assn.org ; American Society of Clinical Oncology (ASCO): www.asco.org ; National Comprehensive Cancer Network (NCCN): www.nccn.org	EHR PQRS		Clinical Process/Effectiveness
NQF 0403	Title: HIV/AIDS: Medical Visit Description: Percentage of patients, regardless of age, with a diagnosis of HIV/AIDS with at least two medical visits during the measurement year with a minimum of 90 days between each visit.	AMA-PCPI Contact Information: cpe@ama-assn.org ; NCQA Contact Information: www.ncqa.org		New	Clinical Process/Effectiveness
TBD (proposed as NQF 0407)	Title: HIV/AIDS: RNA control for Patients with HIV Description: Percentage of patients aged 13 years and older with a diagnosis of HIV/AIDS, with at least two visits during the measurement year, with at least 90 days between each visit, whose most recent HIV RNA level is <200 copies/mL.	NCQA Contact Information: www.ncqa.org	PQRS	New	Clinical Process/Effectiveness

CQM Number	CQM Title & Description	Measure Steward & Contact Information	Other Quality Measure Programs that use the Same CQM***	New CQM	Domain
NQF 0421 *	<p>Title: Preventive Care and Screening: Body Mass Index (BMI) Screening and Follow-Up</p> <p>Description: Percentage of patients aged 18 years and older with an encounter during the reporting period with a documented calculated BMI during the encounter or during the previous six months AND when the BMI is outside of normal parameters, follow-up plan is documented during the encounter or during the previous 6 months of the encounter with the BMI outside of normal parameters.</p> <p>Normal Parameters: Age 65 years and older BMI ≥ 23 and < 30</p> <p>Age 18-64 years BMI ≥ 18.5 and < 25</p>	<p>Centers for Medicare and Medicaid Services (CMS)</p> <p>1-888-734-6433 or http://questions.cms.hhs.gov/app/ask/p/21.26.1139;</p> <p>QIP</p> <p>Contact Information: www.usqualitymeasures.org</p>	EHR PQRS, ACO, Group Reporting PQRS, UDS		Population/ Public Health

b. Column 1 (CQM number) is corrected for the following entry:

CQM Number	CQM Title & Description	Measure Steward & Contact Information	Other Quality Measure Programs that use the Same CQM***	New CQM	Domain
NQF 0418 * and **	<p>Title: Preventive Care and Screening: Screening for Clinical Depression and Follow-Up Plan</p> <p>Description: Percentage of patients aged 12 years and older screened for clinical depression on the date of the encounter using an age appropriate standardized depression screening tool AND if positive, a follow-up plan is documented on the date of the positive screen.</p>	<p>Centers for Medicare and Medicaid Services (CMS)</p> <p>1-888-734-6433 or http://questions.cms.hhs.gov/app/ask/p/21.26.1139;</p> <p>Quality Insights of Pennsylvania (QIP)</p> <p>Contact Information: www.usqualitymeasures.org</p>	EHR PQRS, ACO, Group Reporting PQRS	New	Population/ Public Health

11. On page 54079, in the third column, second full paragraph—

a. Line 3, the reference "Table 8" is corrected to read "Table 10".

b. Line 24, the reference "Table 8" is corrected to read "Table 10".

12. On page 54081, first column, second full paragraph, line 2, the reference "Table 8" is corrected to read "Table 10".

13. On page 54120, middle of the page, in the table heading Table E1--
Determination of Net Average Allowable Costs for the First Payment Year, the table number "Table E1" is corrected to read "Table 19A".

B. Correction of Errors in the Regulations Text

§ 495.6 [Corrected]

1. On page 54149, third column, lines 60 and 61, the sentence "NN. Adding paragraphs (f)(1)(ii)(B) and (C)." is corrected to read "NN. Adding paragraph (f)(1)(ii)(B)."
2. On page 54153, third column, fourth full paragraph (§495.6(j)(14)(ii)(C)(1)), line 10, the reference "CFR 107.314(b)(2)" is corrected to read "CFR 170.314(b)(2)".
3. On page 54155, second column, 14th paragraph (§495.6(l)(6)(ii)), line 1, the phrase "More than 55 percent of" is corrected to read "Subject to paragraph (c) of this section, more than 55 percent of".
3. On page 54157, first column, seventh paragraph (§495.6(m)(4)(ii)), line 1, the phrase "More than 10 percent of" is corrected to read "Subject to paragraph (c) of this section, more than 10 percent of".

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare--Hospital Insurance; and Program No. 93.774, Medicare--Supplementary Medical Insurance Program)

Dated: October 16, 2012

Oliver Potts,

Deputy Executive Secretary to the

Department,

Department of Health and Human

Services.

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